THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 25146 of 2004

Dated: 05-09-2005

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Between:

Manda Babu Rao.

..... PETITIONER

AND

The District Collector, Warangal District and another.

..Respondents.

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 25146 of 2004

ORDER:

This writ petition has been filed by Manda Babu Rao with a prayer to issue a writ, order or direction, particularly, a writ in the nature of mandamus, declaring

the action of the respondents in seeking to evict the petitioner from the land in Sy.No.516 admeasuring Ac:5-19 cents situated in Urus Village, Warangal Mandal and District, without initiating any proceedings in accordance with law, as illegal and arbitrary and consequently, to direct the respondents to consider his representation to assign the aforesaid land to him.

2. The case of the petitioner, as disclosed in the affidavit filed in support of the petition, is as follows:

The petitioner belongs to a Schedule Caste Community and is a land less poor person. His father occupied the land of an extent of Ac:5-19 cents in Sy.No.516 situated at Urus Village, Warangal Mandal and District in the year 1950. His father spent considerable amount and brought the land under cultivation. Since the date of death of his father, he has been cultivating the said land. It is further stated in the affidavit that ryothwari pass book has been issued in the name of his father in respect of the said land. Since the land in question has been in possession and enjoyment of the family of the petitioner, the action of the respondents in evicting him highhandedly is not legal and proper. It is further stated in the affidavit that he is a landless poor person and therefore, he is entitled to assignment of the land, which is in his possession.

3. Respondents filed counter-affidavit. It is stated in the counter-affidavit that the petitioner is not in possession of the land in question and therefore, he is not entitled to assignment of the said land. I deem it appropriate to refer para 4 of the counter-affidavit and it is thus:

> "At the outset it is to be submitted that neither the petitioner nor his late father was never in possession of the land in question as per the revenue records. Since the petitioner was never in possession, the question of giving notice to the petitioner does not arise at all. It is pertinent to submit that as per the Khasra Pahani for 1954-55 and pahanies since then show the land in Sy.No.516 admeasuring Ac:5-19 of Ursu Village is recorded as "Sarkari Khariz Khata, which is in exclusive possession of Government free from all encumbrances. The petitioner has no right over the Government lands in question. Since the land in question is a Government land, the Joint Collector, Warangal during the Review Meeting held on 21-7-2004, has issued instructions to all the concerned departments to prepare lay outs for construction of houses to the weaker section under "YAMBAY SCHEME". Accordingly, Kakatiya Urban Development Authority, Warangal prepared lay out for construction of houses and further action is under process. Hence, the contention of the

> petitioner that he is in possession and enjoyment of the lands in question is a deliberate false statement and invented as a cause for the purpose of filing the present petition. Since the land is needed for public purpose the question of assigning the land to the petitioner cannot be considered. In view of the facts that the lands in question is a Government land and the petitioner is never in possession."

4. Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue appearing for the respondents.

5. Learned counsel for the petitioner submits that the father of the petitioner came into possession of the property in 1950 and ryothwari pass book has been issued in the name of his father. In support of his submissions, some documents have been produced, such as, Pavuthi Bahi and pattadar pass book. The latter documents stand in the name of the petitioner. He further submits that the petitioner has made a representation to the first respondent for recording his name in the revenue records as pattadar.

6, Learned Government Pleader for Revenue appearing for the respondents submits that the petitioner is not in possession of the land in question and therefore, the question of initiating any proceedings to evict him does not arise.

7. Without going into the merits of the case, I deem it appropriate to direct the petitioner to submit an application, if not already submitted, to the first respondent enclosing the documents on which reliance has been placed by him to prove the possession of his father and after death of his father, his possession over the property, within one month from the date of receipt of a copy of this order and thereafter, the first respondent has to pass orders within three months. Till filing of application by the petitioner before the first respondent, status quo with regard to the possession as on this date shall be maintained.

Accordingly, the Writ Petition is disposed of. No order as to costs.

05-09-2005

SJ